

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LOGAN R. VOLPICELLI,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

3:10-cv-00548-RCJ-RAM

ORDER

In 2002, the Internal Revenue Service levied against certain property then in the custody of the Reno Police Department in order to satisfy in part the tax liability of Ferrill Volpicelli (“Ferrill”). In 2003, Ferrill sued the United States on behalf of his twelve-year-old son, Logan Volpicelli (“Logan” or “Plaintiff”), arguing that the property levied belonged to Logan, and not to Ferrill. That case is Case No. 3:03-cv-00090-HDM-VPC. The Hon. Howard D. McKibben entered judgment against Ferrill and for the United States, and the Court of Appeals dismissed Ferrill’s appeal for failure to prosecute. Logan, who is now an adult, has now brought the same suit in pro se. As his father alleged in the previous case, Logan argues that his great-grandmother had “inadvertently” made several checks out to Ferrill, though those checks were meant for the benefit of Logan and his sister. The Reno Police Department seized the checks, some cash, and other property from Ferrill’s safe deposit box pursuant to a search warrant.

Plaintiff argues that the previous case was dismissed without prejudice, but this does not appear to be the case. Judge McKibben entered judgment in favor of the United States and against Ferrill. (*See* J., July 29, 2004, ECF No. 52 in Case No. 3:03-cv-00090-HDM-VPC).

Ferrill's appeal was dismissed for failure to prosecute. (*See* Order, Feb. 23, 2005, ECF No. 63 in Case No. 3:03-cv-00090-HDM-VPC). The case probably should have been dismissed without prejudice in the district court so that Plaintiff could bring the present action upon reaching majority. *See Johns v. Cnty. of San Diego*, 114 F.3d 874, 878 (9th Cir. 1997). But it was not. Final judgment was entered against Ferrill in his capacity as Plaintiff's representative. The present claim is therefore precluded. Plaintiff's remedy at this point is to file a Rule 60(b)(6) motion for relief from judgment in Case No. 3:03-cv-00090-HDM-VPC. The Court expresses no opinion on the merits of the claim.

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) is GRANTED and all other pending motions are DENIED as moot.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case accordingly.

IT IS SO ORDERED.

Dated this 5th day of July, 2011.


ROBERT C. JONES
United States District Judge